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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

FILE:

EAC 02 197 53106

Office: VERMONT SERVICE CENTER

Date:

MAY 17 2004

IN RE:

Petitioner:
Beneficiary:

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

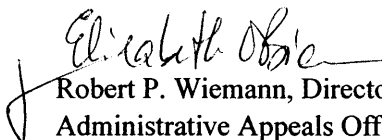
ON BEHALF OF PETITIONER:

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

PUBLIC COPY


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 34-year old native and citizen of the Dominican Republic who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The director denied the petition, in part, finding that the petitioner failed to establish that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse. The director denied the petition, in part, finding that the petitioner failed to establish that she was a person of good moral character and that she entered into the marriage in good faith. The director denied the petition, finding that the petitioner had entered into a marriage with her first husband merely to obtain an immigrant visa; hence, she is subject to section 204(c) of the Act, 8 U.S.C. § 1154(c).

On appeal, counsel for the petitioner submits an addendum and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The first issue to be addressed in this proceeding is whether the petitioner established that she has been battered by or the subject of extreme cruelty perpetrated by her U.S. citizen spouse during the marriage. The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

Battery or extreme cruelty. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Because the petitioner furnished insufficient evidence to establish that she had met this requirement, she was requested on October 24, 2002 to submit additional evidence. The director listed evidence the petitioner could

submit to establish battery or extreme mental cruelty. In response to the request for additional evidence, counsel for the petitioner submitted the following:

- A psychological evaluation of the beneficiary diagnosing her with major depression due to marital conflicts and domestic violence.
- A statement from the petitioner's former landlord stating that the petitioner's spouse constantly physically and verbally mistreated the beneficiary.
- A statement from a friend of the petitioner stating that the petitioner's spouse constantly physically and verbally mistreated the beneficiary.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen spouse during the marriage, the director denied the petition.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen husband. In addition to the items listed above, the evidence consists of the following:

- A sworn statement written by [REDACTED] the petitioner's mother-in-law, stating that her son physically and verbally mistreated the petitioner during their four-year marriage.
- A temporary order for protection dated December 18, 2001 and valid until December 26, 2001, when a hearing was to be held.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, court officials, counselors, or social workers. The petitioner failed to submit evidence that she sought psychological or medical treatment for any abuse she endured. She did not submit evidence that she sought refuge in a shelter or elsewhere. She apparently did not obtain a permanent order of protection against her husband. She did not provide CIS with photographs of injuries. The sworn statements submitted are insufficiently specific as to the exact harm she suffered from her spouse. In review, the evidence is insufficient to establish that the petitioner suffered abuse by or was subjected to extreme cruelty from her citizen spouse during their marriage.

The next issue to be addressed in this proceeding is whether the petitioner established that she is a person of good moral character. Because the petitioner furnished insufficient evidence to establish that she had met this requirement, she was requested on October 24, 2002 to submit additional evidence. The director listed evidence the petitioner could submit to establish good moral character. In response to the request for additional evidence, counsel for the petitioner submitted the following:

- A certificate of no penal record from the Puerto Rico Police.

Counsel for the petitioner failed to address this issue on appeal. The petitioner has established that she is a person of good moral character.

The third issue to be addressed in this proceeding is whether the petitioner established that she entered into the marriage in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

Because the petitioner furnished insufficient evidence to establish that she had met this requirement, she was requested on October 24, 2002 to submit additional evidence. The director listed evidence the petitioner could submit to establish she entered into her marriage in good faith. In response to the request for additional evidence, counsel for the petitioner submitted the following:

- A credit report issued by [REDACTED] for the petitioner and her citizen spouse.

On appeal, counsel for the petitioner states that the evidence on the record, including rent and furniture receipts and family photographs are sufficient to establish that the petitioner wed her spouse in good faith.

In review, the evidence is insufficient to establish that the petitioner wed her citizen spouse in good faith.

The final issue to be addressed in this proceeding is whether the petitioner established that she is subject to section 204(c) of the Act, 8 U.S.C. § 1154(c). Section 204(c) of the Act provides:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

In an Order to Show Cause and Notice of Hearing dated October 2, 1995, the petitioner was informed that her marriage to [REDACTED] was found to be for the purpose of procuring an immigration visa. The petitioner's first husband [REDACTED] filed a Form I-130 on the beneficiary's behalf. The petition was approved then approval was automatically revoked when Garcia Marrero died. The evidence on the record includes [REDACTED] death certificate that indicates that he had never married.

On appeal, counsel for the petitioner asserts that since [REDACTED] died, there is no further evidence that the petitioner failed to wed her first citizen spouse in good faith. Counsel's argument is persuasive. The petitioner left the United States under an order of voluntary departure without a finding by the immigration court that her first marriage was entered into for the purpose of evading the immigration laws. The petitioner has overcome this objection of the director.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.



ORDER: The appeal is dismissed.